

Senate Study Bill 1310

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CHAIRPERSON QUIRMBACH)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the construction bidding procedures Act by
2 modifying procedures and requirements for letting public
3 improvement contracts, and making corrections.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1909XC 82
6 eg/gg/14

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1 1 Section 1. Section 26.3, subsection 1, Code 2007, is
1 2 amended to read as follows:
1 3 1. If the estimated total cost of a public improvement
1 4 exceeds the competitive bid threshold of one hundred thousand
1 5 dollars, or the adjusted competitive bid threshold established
1 6 in section 314.1B, the governmental entity shall advertise for
1 7 sealed bids for the proposed public improvement by publishing
1 8 a notice to bidders ~~as provided in section 362.3. The notice~~
1 9 ~~to bidders shall be published as provided in section 362.3,~~
1 10 ~~except that the notice shall be published more than twenty~~
1 11 ~~days but not more than forty-five days before the date for~~
1 12 ~~filing bids.~~ Additionally, the governmental entity may
1 13 publish a notice in a relevant contractor organization
1 14 publication and a relevant contractor plan room service with
1 15 statewide circulation, provided that a notice is posted on a
1 16 website sponsored by either a governmental entity or a
1 17 statewide association that represents the governmental entity.
1 18 ~~The notice to bidders shall be published more than twenty days~~
1 19 ~~but not more than forty-five days before the date for filing~~
1 20 ~~bids.~~

1 21 Sec. 2. Section 26.8, subsection 1, Code 2007, is amended
1 22 to read as follows:
1 23 1. Each bidder shall accompany its bid with a bid security
1 24 as security that the successful bidder will enter into a
1 25 contract for the work bid upon and will furnish after the
1 26 award of contract a corporate surety bond, acceptable to the
1 27 governmental entity, for the faithful performance of the
1 28 contract, in an amount equal to one hundred percent of the
1 29 amount of the contract. The bid security shall be in an
1 30 amount fixed by the governmental entity, and shall be in the
1 31 form of a cashier's check or certified check drawn on a
1 32 state-chartered or federally chartered bank, or a certified
1 33 share draft drawn on a state-chartered or federally chartered
1 34 credit union, or the governmental entity may provide for a
1 35 bidder's bond with corporate surety satisfactory to the
2 1 governmental entity. ~~The bid bidder's~~ bond shall contain no
2 2 conditions except as provided in this section.

2 3 Sec. 3. Section 26.10, unnumbered paragraph 1, Code 2007,
2 4 is amended to read as follows:
2 5 The governmental entity shall open, announce the amount of
2 6 the bids, and file all proposals received, at the time and
2 7 place specified in the notice to bidders. The governmental
2 8 entity may, by resolution, award the contract for the public
2 9 improvement to the bidder submitting the lowest responsive,
2 10 responsible bid, determined as provided in section 26.9, or
2 11 the governmental entity may reject all bids received, fix a
2 12 new date for receiving bids, and order publication of a new
2 13 notice to bidders. The governmental entity shall retain the
2 14 bid security furnished by the successful bidder until the
2 15 approved contract form has been executed, ~~and~~ a bond has been
2 16 filed by the bidder guaranteeing the performance of the
2 17 contract, and the contract and bond~~7~~ have been approved by the

2 18 governmental entity. The provisions of chapter 573, where
2 19 applicable, apply to contracts awarded under this chapter.
2 20 Sec. 4. Section 26.11, Code 2007, is amended to read as
2 21 follows:
2 22 26.11 DELEGATION OF AUTHORITY.
2 23 When bids are required for any public improvement, the
2 24 governmental entity may delegate, by motion, resolution, or
2 25 policy to the city manager, clerk, engineer, or other public
2 26 officer, as applicable, the duty of receiving and opening bids
2 27 and announcing the results. The officer shall report the
2 28 results of the bidding with the officer's recommendations to
2 29 the next regular meeting of the governmental entity's
2 30 governing body or at a special meeting called for that
2 31 purpose.

2 32 Sec. 5. Section 26.13, subsection 3, Code 2007, is amended
2 33 to read as follows:

2 34 3. If labor and materials are yet to be provided at the
2 35 time of the request for the release of the retained funds
3 1 labor or materials are yet to be provided is made, an amount
3 2 equal to two hundred percent of the value of the labor or
3 3 materials yet to be provided, as determined by the
3 4 governmental entity's or the department's authorized contract
3 5 representative, may be withheld until such labor or materials
3 6 are provided. For purposes of this section, "authorized
3 7 contract representative" means the person chosen by the
3 8 governmental entity or the department to represent its
3 9 interests or the person designated in the contract as the
3 10 party representing the governmental entity's or the
3 11 department's interest regarding administration and oversight
3 12 of the project.

3 13 Sec. 6. Section 26.14, Code 2007, is amended to read as
3 14 follows:

3 15 26.14 COMPETITIVE QUOTATIONS FOR PUBLIC IMPROVEMENT
3 16 CONTRACTS.

3 17 1. Competitive quotations shall be required for a public
3 18 improvement having an estimated total cost that exceeds the
3 19 applicable threshold amount provided in this section, but is
3 20 less than the competitive bid threshold established in section
3 21 26.3.

3 22 2. Unless the threshold ~~amount is~~ amounts are adjusted
3 23 pursuant to section 314.1B, the ~~competitive quotation~~
3 24 following threshold amounts shall be as follows apply:

3 25 a. Sixty-seven thousand dollars for a county, including a
3 26 county hospital.

3 27 b. Fifty-one thousand dollars for a city having a
3 28 population of fifty thousand or more.

3 29 c. Fifty-one thousand dollars for a school district having
3 30 a population of fifty thousand or more.

3 31 d. Fifty-one thousand dollars for an aviation authority
3 32 created within a city having a population of fifty thousand or
3 33 more.

3 34 e. Thirty-six thousand dollars for a city having a
3 35 population of less than fifty thousand, for a school district
4 1 having a population of less than fifty thousand, and for any
4 2 other governmental entity.

4 3 f. The threshold amount applied to a city applies to a
4 4 city hospital.

4 5 3. a. When a competitive quotation is required, the
4 6 governmental entity shall make a good faith effort to obtain
4 7 quotations for the work from at least two contractors
4 8 regularly engaged in such work prior to letting a contract.
4 9 Quotations may be obtained from contractors after the
4 10 governmental entity provides a description of the work to be
4 11 performed, including the plans and specifications prepared by
4 12 an architect or engineer, if required under chapter 542B or
4 13 544A, and an opportunity to inspect the work site. The
4 14 contractor shall include in the quotation the price for labor,
4 15 materials, equipment, and supplies required to perform the
4 16 work. If the work can be performed by an employee or
4 17 employees of the governmental entity, the governmental entity
4 18 may file a quotation for the work to be performed in the same
4 19 manner as a contractor. If the governmental entity receives
4 20 no quotations after making a good faith effort to obtain
4 21 quotations from at least two contractors regularly engaged in
4 22 such work, the governmental entity may negotiate a contract
4 23 with a contractor regularly engaged in such work.

4 24 b. In making the good faith effort required by this
4 25 subsection, the governmental entity shall provide the
4 26 information about the project listed in paragraph "a" either
4 27 directly to contractors or by disseminating such information
4 28 on a website sponsored by the governmental entity or through

4 29 other electronic or print media. Such information shall be
4 30 provided in a timely manner so that a contractor regularly
4 31 engaged in the local area in the type of work sought by the
4 32 governmental entity has a reasonable opportunity to submit a
4 33 competitive quotation.

4 34 The good faith effort requirement shall be satisfied by any
4 35 reasonable procedure that provides broad and timely notice.

5 1 The governmental entity is not required to do either of the
5 2 following, but a governmental entity shall be deemed to have
5 3 satisfied the requirement if the governmental entity:

5 4 (1) Publishes notice as provided in section 26.3.

5 5 (2) (a) Sends notice at least twenty days before the date
5 6 for filing quotations by letter, facsimile, or electronic mail
5 7 to a list of interested contractors maintained by the
5 8 governing body of the governmental entity. A list shall be a
5 9 public record under chapter 22. Upon written or electronic
5 10 request to a governmental entity, a contractor shall be
5 11 included, without charge, on a list of interested contractors.
5 12 A list shall provide the name of the contractor's business, a
5 13 valid mailing address and, if available, an electronic mail
5 14 address, a telephone number, and the name of a contact person.

5 15 (b) A governmental entity may subdivide a list of
5 16 interested contractors by type of work performed, and a
5 17 contractor may choose to be included in any or all
5 18 subdivisions. If a list is subdivided, the governmental
5 19 entity satisfies the good faith effort requirement by sending
5 20 notice to the contractors named in the appropriate
5 21 subdivision.

5 22 (c) A contractor may be removed from a list of interested
5 23 contractors if evidence exists that the contractor is no
5 24 longer engaged in the type of work; if the contractor's mail
5 25 address and, if available, electronic mail address cease to be
5 26 valid; or if the contractor requests to be removed from the
5 27 list.

5 28 ~~b.~~ c. The governmental entity shall designate the time,
5 29 place, and manner for filing quotations, which may be received
5 30 by mail, facsimile, or electronic mail. The governmental
5 31 entity shall award the contract to the contractor submitting
5 32 the lowest responsive, responsible quotation subject to
5 33 section 26.9, or the governmental entity may reject all of the
5 34 quotations. The unconditional acceptance and approval of the
5 35 lowest responsive, responsible quotation shall constitute the
6 1 award of a contract. The governmental entity shall record the

6 2 approved quotation in its meeting minutes. ~~Quotations~~ The
6 3 contractor awarded the contract shall not commence work until
6 4 the contractor's performance and payment bond has been
6 5 approved by the governmental entity. A governmental entity
6 6 may delegate the authority to award a contract, to execute a
6 7 contract, to authorize work to proceed under a contract, or to
6 8 approve the contractor's performance and payment bond to an
6 9 officer or employee of the governmental entity. A quotation
6 10 approved outside a meeting of the governing body of a
6 11 governmental entity shall be included in the minutes of the
6 12 next regular or special meeting of the governing body. ~~The~~
6 13 governmental entity shall award the contract to the contractor
6 14 submitting the lowest responsive, responsible quotation
6 15 subject to section 26.9, or the governmental entity may reject
6 16 all of the quotations.

6 17 ~~e.~~ d. If a public improvement may be performed by an
6 18 employee of the governmental entity, the amount of estimated
6 19 sales and fuel tax and the premium cost for the performance
6 20 and payment bond which a contractor identifies in its
6 21 quotation shall be deducted from the contractor's price for
6 22 determining the lowest responsible ~~bidder~~ quotation. If no
6 23 quotations are received to perform the work, or if the
6 24 governmental entity's estimated cost to do the work with its
6 25 employee is less than the lowest responsive, responsible
6 26 quotation received, the governmental entity may authorize its
6 27 employee or employees to perform the work.

6 28 Sec. 7. NEW SECTION. 26.14A ALTERNATIVE PROCEDURES.

6 29 1. When competitive quotations are required under section
6 30 26.14 for a public improvement, the governmental entity may
6 31 proceed, in lieu of competitive quotations, as if the
6 32 estimated total cost of the public improvement exceeds the
6 33 competitive bid threshold under section 26.3.

6 34 2. If the total estimated cost of the public improvement
6 35 does not warrant either competitive quotations under section
7 1 26.14 or competitive bidding under section 26.3, the
7 2 governmental entity may nevertheless proceed with competitive
7 3 quotations or competitive bidding for the public improvement.

7 4 Sec. 8. Section 314.1B, subsection 2, paragraph c, Code

7 5 2007, is amended to read as follows:

7 6 c. The subcommittee shall not make an initial adjustment
7 7 to the competitive bid threshold in section 26.3, or adjust
7 8 the competitive quotation threshold in section 26.14 in effect
7 9 as of January 1, 2007, to be effective prior to January 1,
7 10 2012. Thereafter, the subcommittee shall adjust the bid
7 11 threshold amount in accordance with subsection 3 but shall not
7 12 adjust the bid threshold to an amount less than the bid
7 13 threshold applicable to a governmental entity on January 1,
7 14 2007. The subcommittee shall adjust the competitive quotation
7 15 threshold in section 26.14 at the same time and by the same
7 16 percentage as adjustments are made to the competitive bid
7 17 threshold.

7 18 Sec. 9. Section 314.1B, subsection 2, paragraph d, Code
7 19 2007, is amended by striking the paragraph.

7 20 Sec. 10. Section 380.4, unnumbered paragraph 1, Code 2007,
7 21 is amended to read as follows:

7 22 Passage of an ordinance, amendment, or resolution requires
7 23 a majority vote of all of the members of the council, except
7 24 when the mayor may vote to break a tie vote in a city with an
7 25 even number of council members, as provided in section 372.4.
7 26 Passage of a motion requires a majority vote of a quorum of
7 27 the council. A resolution must be passed to spend public
7 28 funds in excess of ~~twenty-five~~ one hundred thousand dollars on
7 29 ~~any one~~ a public improvement project, or to accept public
7 30 improvements and facilities upon their completion. Each
7 31 council member's vote on a measure must be recorded. A
7 32 measure which fails to receive sufficient votes for passage
7 33 shall be considered defeated.

7 34 Sec. 11. Section 384.20, unnumbered paragraph 3, Code
7 35 2007, is amended to read as follows:

8 1 "Continuing appropriation" means the unexpended portion of
8 2 the cost of public improvements, as defined in section ~~26.3~~
8 3 26.2, which cost was adopted through a public hearing pursuant
8 4 to section 26.12 and was included in an adopted or amended
8 5 budget of a city. A continuing appropriation does not expire
8 6 at the conclusion of a fiscal year. A continuing
8 7 appropriation continues until the public improvement is
8 8 completed, but expenditures under the continuing appropriation
8 9 shall not exceed the resources available for paying for the
8 10 public improvement.

8 11 Sec. 12. Section 384.23, Code 2007, is amended to read as
8 12 follows:

8 13 384.23 CONSTRUCTION OF WORDS "AND" AND "OR."

8 14 As used in divisions III to ~~V~~ V of this chapter, the use
8 15 of the conjunctive "and" includes the disjunctive "or" and the
8 16 use of the disjunctive "or" includes the conjunctive "and,"
8 17 unless the context clearly indicates otherwise.

8 18 Sec. 13. Section 384.37, subsection 17, Code 2007, is
8 19 amended to read as follows:

8 20 17. "Proposal" means a legal bid on work advertised for a
8 21 public improvement under ~~division VI of this chapter~~ 26.

8 22 Sec. 14. Section 384.53, Code 2007, is amended to read as
8 23 follows:

8 24 384.53 PROCEDURES TO LET CONTRACT.

8 25 Contract letting procedures shall be as provided in
8 26 ~~division VI of this chapter~~ 26. The council may award any
8 27 number of contracts for construction of any public
8 28 improvement.

8 29 Sec. 15. Section 386.6, subsection 6, Code 2007, is
8 30 amended to read as follows:

8 31 6. If the council orders the construction of the
8 32 improvement, it shall proceed to let contracts therefor in
8 33 accordance with chapter ~~384, division VI~~ 26.

8 34 Sec. 16. Section 386.7, subsection 3, Code 2007, is
8 35 amended to read as follows:

9 1 3. If the council orders the construction of the
9 2 self-liquidating improvement, contracts for it shall be let in
9 3 accordance with ~~division VI of chapter 384~~ 26.

9 4 EXPLANATION

9 5 This bill amends Code chapter 26 to:

9 6 1. Correct wording and organization of sentences in
9 7 several sections of the bill.

9 8 2. Allow the results of competitive bidding and approved
9 9 competitive quotations to be reported, in addition to regular
9 10 meetings, at a special meeting of the governing body.

9 11 3. Determine the lowest responsible quotation for a public
9 12 improvement to be performed by an employee of the governmental
9 13 entity, by requiring a contractor to deduct the premium cost
9 14 for a performance and payment bond from the contractor's
9 15 price.

9 16 4. Provide some additional procedures that a governmental
9 17 entity may follow. Pursuant to Code section 26.14, as
9 18 amended, if a governmental entity receives no quotations after
9 19 having made a good faith effort to obtain quotations from at
9 20 least two contractors, the governmental entity may negotiate a
9 21 contract with an appropriate contractor. Also, a new Code
9 22 section 26.14A provides that a governmental entity may proceed
9 23 with a competitive quotation or competitive bidding procedure
9 24 even when the total estimated cost of the public improvement
9 25 does not require such additional procedures.

9 26 The bill also amends Code section 26.14 to provide that a
9 27 governmental entity may provide information for quotations
9 28 directly to contractors or by disseminating such information
9 29 on the governmental entity's website or through other
9 30 electronic or print media.

9 31 The bill also amends the competitive quotation section to
9 32 provide notice procedures that, if followed, a governmental
9 33 entity shall be deemed to have satisfied the good faith effort
9 34 requirement to obtain quotations.

9 35 The bill amends Code section 314.1B to provide that the
10 1 vertical infrastructure bid threshold subcommittee shall not
10 2 adjust the competitive quotation threshold in Code section
10 3 26.14 in effect as of January 1, 2007, to be effective prior
10 4 to January 1, 2012. The bill requires that the subcommittee
10 5 adjust the competitive quotation threshold in Code section
10 6 26.14 at the same time and by the same percentage as
10 7 adjustments are made to the competitive bid threshold.

10 8 The bill strikes Code section 314.1B, subsection 2,
10 9 paragraph "d", which requires that the vertical infrastructure
10 10 bid threshold subcommittee make adjustments to the competitive
10 11 quotation threshold in Code section 26.14 for vertical
10 12 infrastructure in accordance with adjustments made by the
10 13 horizontal infrastructure subcommittee under Code section
10 14 314.1B, subsection 1, applicable to city and county highway,
10 15 bridge, and culvert projects.

10 16 The bill also amends Code section 380.4 to provide that a
10 17 city council must pass a resolution to spend public funds in
10 18 excess of \$100,000 on a public improvement project.

10 19 The bill corrects references for contract=letting
10 20 procedures, formerly under Code chapter 384, to the new Code
10 21 chapter 26.

10 22 LSB 1909XC 82

10 23 eg:rj/gg/14.2